



California Fair Political Practices Commission

June 26, 1989

Honorable Irving Shimer
Superior Court
1725 Main Street
Santa Monica, CA 90401

Re: Your Request for Advice
Our File No. A-89-339

Dear Judge Shimer:

This is in response to your request for advice concerning your responsibilities under the provisions of the Political Reform Act (the "Act").¹

QUESTION

May you receive a gift of waiver of dues in excess of \$1,000 from a private club?

CONCLUSION

Receipt of a waiver of membership dues in excess of \$1,000 does not violate the provisions of the Act. Such a gift is reportable on your statement of economic interests.

FACTS

You are a judge of the Superior Court of Santa Monica. At the time of your appointment to the bench, you were an active, dues-paying member of the Friars Club, a private club in Beverly Hills. Your monthly dues of approximately \$60 entitled you to the use of club facilities, including a health club and dining room. Use of club facilities was subject to additional charges.

Some months after you became a judge, the club made you an honorary member. You no longer pay monthly dues but continue to use the facilities paying the usual charges for usage. In the

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

intervening years, dues have increased to approximately \$100 per month.

ANALYSIS

The Act defines gift as:

(a) (A)ny payment to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status....

Section 82028(a).

On the basis of this definition, a waiver of club membership fees constitutes a gift to you under the Act.

In some instances, the Act limits gifts to public officers to the amount of \$1,000. For example, the Act provides that:

No elected officeholder shall accept any gift or honorarium for any speech, article, or published work on a subject relating to the governmental process from any single source which is in excess of one thousand dollars (\$1,000), in any calendar year, except reimbursement for actual travel expenses and reasonable subsistence in connection therewith.

Section 85400.

Because you hold an elective office, you are an elected officeholder for purposes of the Act. (Section 82020.) An elective office includes a judicial office. (Section 82023.) Thus, the provisions of Section 85400 are applicable to you.

However, the Commission has interpreted the prohibition of Section 85400 in Regulation 18540 (copy enclosed), which provides that:

(a) No elected officer may accept any payment for any speech, article, or published work on a subject relating to the governmental process, totaling more than one thousand dollars (\$1,000) in value from any single source in a calendar year, excluding actual travel expenses and reasonable subsistence directly in connection therewith, whether such payment is denominated a gift or honorarium.

(b) The term "honorarium" means any payment received for making a speech, participating in a panel or seminar, or writing an article or other published work.

Regulation 18540(a) and (b).²

It follows from the above that the limitation on receipt of gifts does not apply to a gift of free membership in a club. You are therefore free to accept a gift of \$1,000 or more in the form of a waiver of membership fees.

Any gift of \$50 or more that you receive from the club, however, must be reported in your statement of economic interests. Officials who are listed in Section 87200 must file yearly statements of economic interests. (Sections 87200-87313.) Officials who receive gifts aggregating \$50 or more from a single source during a calendar year must report those gifts on Schedule F of their statement of economic interests. (Section 87207.) The Act requires that the statement contain:

(1) The name and address of each source of income aggregating two hundred fifty dollars (\$250) or more in value, or fifty dollars (\$50) or more in value if the income was a gift, and a general description of the business activity, if any, of each source.


Section 87207(a)(1).

In brief, acceptance of a gift of club membership in excess of \$1000 does not constitute a violation of the Act. However, this gift must be reported in your statement of economic interests.

Should you have further questions regarding the above, do not hesitate to call me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel



By: Blanca M. Breeze
Counsel, Legal Division

KED:BMB:plh
Enclosure

² Regulation 18540 was approved for adoption at the June 6, 1989 Commission meeting. It currently is pending review by the Office of Administrative Law.



The Superior Court

1725 MAIN STREET
SANTA MONICA, CALIFORNIA 90401
CHAMBERS OF
IRVING SHIMER, JUDGE

FPPC
MAY 30 2 17 PM '89

TELEPHONE
(213) 458-5404

May 26, 1989

Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Gentlemen:

I would like to request your opinion on a matter of concern to me.

At the time I was appointed to the bench, I was an active, dues-paying member of the Friars Club, a private club in Beverly Hills. For monthly dues of around \$60 (I don't recall the precise amount), I was allowed to use the facilities of the club. This meant I could use the health club and dining room, paying customary charges for the usage.

Some months after I became a judge, the club made me an honorary member. This meant I did not have to pay monthly dues. But I still had to pay the usual charges for any use made of club facilities.

In the intervening years, the amount of dues increased from time to time. It is my impression they now total \$100 per month.

Since the dues on an annual basis, as waived, would exceed \$1,000, I would like to know how I may continue my relationship with the club, if possible.

1. Is the waiver of dues such gift as would jeopardize my judgeship when the dollar amount of the waiver exceeds \$1,000?
2. If such jeopardy does arise, which, if any, of the following will allow me to remain associated with the club?

Fair Political Practices Commission

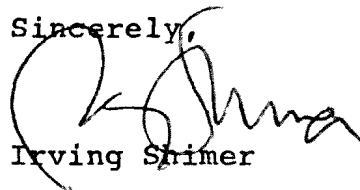
May 26, 1989

Page 2

- a. Assuming current dues are \$100 per month, if I pay the club voluntarily more than \$200 as a contribution towards dues, accepting a waiver of less than \$1,000, will that suffice?
- b. If I simply disclaim the honorary membership for three months, do not use the facilities in any way during those three months, and resume such usage thereafter, will that suffice?
- c. Or do I have to actually resign the membership, and leave it to the club to determine whether or not to extend the honorary membership to me after the New Year? In other words, am I required to resign effective September 30 in order to avoid the \$1,000 maximum?

I know of at least two other Superior Court Judges who hold honorary memberships in the Friars Club who will be interested in your response. I look forward to hearing from you.

Sincerely,



Irving Shimer

IS:lw



The Superior Court

1725 MAIN STREET
SANTA MONICA, CALIFORNIA 90401

CHAMBERS OF
IRVING SHIMER, JUDGE

May 26, 1989

TELEPHONE
(213) 458-5404

Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Gentlemen:

I would like to request your opinion on a matter of concern to me.

At the time I was appointed to the bench, I was an active, dues-paying member of the Friars Club, a private club in Beverly Hills. For monthly dues of around \$60 (I don't recall the precise amount), I was allowed to use the facilities of the club. This meant I could use the health club and dining room, paying customary charges for the usage.

Some months after I became a judge, the club made me an honorary member. This meant I did not have to pay monthly dues. But I still had to pay the usual charges for any use made of club facilities.

In the intervening years, the amount of dues increased from time to time. It is my impression they now total \$100 per month.

Since the dues on an annual basis, as waived, would exceed \$1,000, I would like to know how I may continue my relationship with the club, if possible.

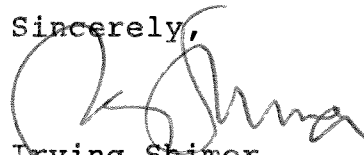
1. Is the waiver of dues such gift as would jeopardize my judgeship when the dollar amount of the waiver exceeds \$1,000?
2. If such jeopardy does arise, which, if any, of the following will allow me to remain associated with the club?

Fair Political Practices Commission
May 26, 1989
Page 2

- a. Assuming current dues are \$100 per month, if I pay the club voluntarily more than \$200 as a contribution towards dues, accepting a waiver of less than \$1,000, will that suffice?
- b. If I simply disclaim the honorary membership for three months, do not use the facilities in any way during those three months, and resume such usage thereafter, will that suffice?
- c. Or do I have to actually resign the membership, and leave it to the club to determine whether or not to extend the honorary membership to me after the New Year? In other words, am I required to resign effective September 30 in order to avoid the \$1,000 maximum?

I know of at least two other Superior Court Judges who hold honorary memberships in the Friars Club who will be interested in your response. I look forward to hearing from you.

Sincerely,



Irving Shimer

IS:lw



California Fair Political Practices Commission

June 1, 1989

Honorable Irving Shimer
The Superior Court
1725 Main Street
Santa Monica, CA 90401

Re: Letter No. 89-339

Dear Mr. Shimer:

Your letter requesting advice under the Political Reform Act was received on May 30, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Blanca Breeze an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Scott Hallabm for
Kathryn E. Donovan
General Counsel

KED:plh